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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Joshua David Williams,

11 Plaintiff,

12 v.

13 Bonnie Dumanis, et al,

14 Defendants.

CASE NO. 16cv1303-WQH-NLS

ORDER

15 HAYES, Judge:

16 The matter before the Court is the Supplemental Motion for Temporary
17 Restraining Order (ECF No. 21) filed by Plaintiff Joshua David Williams.

18 **I. Procedural History**

19 Plaintiff initiated this action by filing a complaint on May 31, 2016. (ECF No.
20 1). In the complaint, Plaintiff seeks injunctive relief pursuant to 42 U.S.C. § 1983
21 preventing a host of City, County, and State officials and entities from “keeping,
22 holding, [and] maintaining any record of [Plaintiff’s] arrest(s) of April 2008 for
23 violating [Cal.] Penal Code 290.018.” (ECF No. 1 at 1-6, 13).

24 On November 22, 2016, the Court granted Plaintiff leave to proceed in forma
25 pauperis (ECF Nos. 2, 7), denied Plaintiff’s motion to redact (ECF No. 13), and granted
26 Plaintiff’s motion to file an amended complaint in this action (ECF No. 9). (ECF No.
27 19). The Court ordered that “Plaintiff’s First Amended Complaint must be filed no later
28 than December 30, 2016. If Plaintiff fails to file an Amended Complaint on or before

1 that date, the Court will enter a final Order dismissing this civil action pursuant to Fed.
 2 R. Civ. P. 41(b) based on his failure to prosecute.” (ECF No. 19 at 9). The Court
 3 declined to rule on Plaintiff’s Motion for Temporary Restraining Order and Preliminary
 4 Injunction (ECF No. 18) against Defendant California Department of Corrections and
 5 Rehabilitation because “Plaintiff’s Motion is premature, as Defendant California
 6 Department of Corrections and Rehabilitation has not been served in this matter.” (ECF
 7 No. 19 at 2 n.1).

8 On November 29, 2016, the Court ordered that Plaintiff’s Supplemental Motion
 9 for Temporary Restraining Order (ECF No. 21) be filed nunc pro tunc to date received.
 10 (ECF No. 20).

11 **II. Contentions of the Plaintiff (ECF No. 21)**

12 In the Supplemental Motion, Plaintiff requests that the Court “issue an
 13 emergency temporary restraining order without notice to all parties . . . to the California
 14 Department of Corrections and Rehabilitation Corcoran Substance Abuse Treatment
 15 Facility[.]” (ECF No. 21 at 1). Plaintiff requests the order be issued to “Counselor
 16 staff, case records analysts and any other staff assigned to review the computerized
 17 records maintained by the Department.” *Id.*

18 Plaintiff contends that he “will suffer immediate and irreparable injury if this
 19 court does not act swiftly” because “the above departmental employees are about to
 20 review the computerized records” and this review “involves the reduction of custody
 21 time, and possible placement into a community re-entry facility[.]” *Id.* Plaintiff
 22 contends that “if this court does not act swiftly, the departmental review and subsequent
 23 placement of an ‘R’ suffix and VIO administrative determinant place me in a credit
 24 earning category not commensurate or within the bounds of truth.” *Id.* at 2.

25 **III. Analysis**

26 Rule 65 of the Federal Rules of Civil Procedure provides:

27 (a)(1) The court may issue a preliminary injunction only on notice to the
 28 adverse party.

(b)(1) The court may issue a temporary restraining order without written

1 or oral notice to the adverse party or its attorney only if:

2 (A) specific facts in an affidavit or a verified complaint
3 clearly show that immediate and irreparable injury, loss, or
4 damage will result to the movant before the adverse party can
5 be heard in opposition; and

6 (B) the movant's attorney certifies in writing any efforts
7 made to give notice and the reasons why it should not be
8 required.

9 Fed. R. Civ. P. 65(a)(1) & (b)(1). The Court of Appeals has observed that

10 The stringent restrictions imposed ... by Rule 65 on the availability of ex
11 parte temporary restraining orders reflect the fact that our entire
12 jurisprudence runs counter to the notion of court action taken before
13 reasonable notice and an opportunity to be heard has been granted both
14 sides of a dispute. Ex parte temporary restraining orders are no doubt
15 necessary in certain circumstances, but under federal law they should be
16 restricted to serving their underlying purpose of preserving the status quo
17 and preventing irreparable harm just so long as is necessary to hold a
18 hearing, and no longer.

19 *Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (quoting
20 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 438-39 (1974)).

21 To the extent Plaintiff seeks a temporary restraining order without notice to the
22 opposing parties pursuant to Rule 65(b), Plaintiff has failed to show “immediate and
23 irreparable injury” that will result “before the adverse party can be heard in
24 opposition[,]” and Plaintiff has failed to “certif[y] in writing any efforts made to give
25 notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1)(A);
26 65(b)(1)(B). Plaintiff has failed to comply with the requirements of Rule 65(b).

27 **IV. Conclusion**

28 IT IS HEREBY ORDERED that Plaintiff’s Supplemental Motion for Temporary
Restraining Order (ECF No. 21) is denied without prejudice.

DATED: December 2, 2016


WILLIAM Q. HAYES
United States District Judge